



State of Idaho

DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

March 28, 2007

BOB SCHAFER
WATERMASTER
WATER DISTRICT No. 34
PO BOX 53
MACKAY, ID 83251-0053

Re: Resolutions passed at the 2007 Water District No. 34 Annual Meeting

Mr. Schafer,

As I discussed with you at the 2007 Annual Meeting for Water District No. 34, two of the resolutions passed at that meeting propose activities that are not within the authority of the water district, as provided by Title 42, Chapter 6 of the Idaho Code. Idaho Code §42-605(2) provides that users may adopt resolutions, but the scope of those resolutions must not conflict with the governing statutes. The two resolutions are listed below.

1 No. 3 on the agenda:

Vote CFS expressed in dollars over 5 Yr. Avg Per Idaho Code 42-605 (4) shall be entitled to a number of votes equal to the average annual dollar amount and any fraction thereof assessed for that person's qualifying water right for the previous five (5) Years \$35 administrative assessment will not qualify a vote

2. From the 2007 annual meeting minutes:

Dick Taggart moved and Walt Johnson seconded that all use and non-use be charged a \$35 non voting administrative fee, based on a 5 year average

The first resolution disenfranchises water right holders that have minimal use when voting by the alternative method described in Idaho Code §42-605(4). Implementation of this resolution would be in conflict with the provisions of Idaho Code §42-605(4) because that statute does not provide for an assessment threshold below which a user is not entitled to vote. Instead, the statute states that a user is entitled to vote on any dollar or fraction of a dollar of assessment.

Department staff present at the annual meeting discussed this issue with Loy Pearson, Chairman of the Water District No. 34 Advisory Committee. Mr. Pearson indicated that the

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second resolution listed above defined the \$35 administrative assessment as a "fee", and so is not an assessment for a person's "qualifying water right". However, Idaho Code does not provide a means for a water district to collect any such fees.

Idaho Code §42-612(3) provides for the water district to collect an operating budget from the water users based on each user's proportionate share of the expenses. Furthermore, Idaho Code §42-612 (4) provides for a water district to establish a minimum charge for water delivery and further specifies that the minimum charge applies whenever the proportionate charge is less than the minimum charge. The remaining sections of Chapter 6, Title 42 of the Idaho Code do not provide for additional assessments or fees (other than interest, penalties, and cost recovery related to delinquent payment). The second resolution as presented in the annual meeting minutes attempts to collect a portion of the operating budget from each water right holder in the district beyond that user's water usage.

Because these two resolutions are not authorized by Idaho Law, Water District No. 34 should not implement these resolutions as presented. Instead, I have instructed the Water District to collect the adopted 2007 operating budget by assessing water users in a manner consistent with previous years; each user will be assessed a proportionate share of the adopted budget based on that user's average use over the last five (5) years, subject to a \$35 minimum charge. The minimum charge is to be applied whenever a user's proportionate share of the budget is less than \$35.

Furthermore, at the 2008 Annual Meeting of Water District No. 34, if the alternate method of voting is requested, each user will vote based on the average dollar amount paid by that user over the previous five (5) years. Minimum charges will be included in the voting credentials calculations.

Please call if you have questions

Sincerely,



Nick Miller
Water Distribution Section

cc:
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Big Lost River Irrigation District 101 S Main Ave Mackay, ID

Water District No 34 Advisory Committee:

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